RECORDATION NO. 23331 FILED

ALVORD AND ALVORD
ATTORNEYS AT LAW

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Washington, D.C.

20006-2973

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9-24 AM

TS
SURFACE TRANSPORTATION BOARD

OF COUNSEL URBAN A. LESTER

January 16, 2001

ELIAS C. ALVORD (1942)

ELLSWORTH C. ALVORD (1964)

Mr. Vernon A. Williams Secretary Surface Transportation Board Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are three (3) copies of an Assignment and Assumption Agreement, dated December 18, 2000, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Seller/Assignor:

General Electric Railcar

Services Corporation

33 West Monroe Street

Chicago, IL 60603

Buyer/Assignee:

Transport Capital Rail

Partners, LLC

70 West Madison Street

Suite 1960

Chicago, IL 60602

A description of the railroad equipment covered by the enclosed document is:

3 railcars bearing HS reporting marks and road numbers within the series 4701 to 4807 and 108 railcars bearing CUOH reporting marks and road numbers within the series 7300 - 7429

Mr. Vernon A. Williams January 16, 2001 Page Two

A short summary of the document to appear in the index follows:

Assignment and Assumption Agreement between General Electric Railcar Services Corporation, Seller/Assignor, and Transport Capital Rail Partners, LLC, Buyer/Assignee, covering 3 railcars bearing HS reporting marks and road numbers within the series 4701 to 4807 and 108 railcars bearing CUOH reporting marks and road numbers within the series 7300 - 7429.

Also enclosed is a check in the amount of \$27.00 payable to the order of the Surface Transportation Board covering the required recordation fee and cross-indexing fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

Robert W. Alvord

RWA/anm Enclosures

#### ASSIGNMENT AND ASSUMPTION AGREEMENT

JAN 17 '01

9-24 AM

(The Columbus & Ohio River Rail Road Company)

SURFACE TRANSPORTATION BOARD

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated December 18, 2000 (this "Agreement"), is between General Electric Railcar Services Corporation, a Delaware corporation (the "Seller"), and Transport Capital Rail Partners, LLC, a Delaware limited liability company (the "Buyer").

#### WITNESSETH:

WHEREAS, the Buyer and the Seller have entered into that certain Purchase Agreement, dated as of December 1, 2000 (the "Purchase Agreement"), providing for the purchase of the Ownership Interest by the Buyer from the Seller, subject to the terms and conditions set forth therein; and

WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Seller and the Buyer on the date hereof.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows.

- 1. <u>Definitions</u>. Capitalized terms used herein without definition shall have the meanings assigned to them in Section 4 of this Agreement.
- 2. <u>Assignment</u>. Effective as to each unit of Equipment, on the Closing Date, the Seller sells to the Buyer all of the Seller's rights, title and interest in and to such unit and assigns to the Buyer all of the Seller's rights and obligations under the Per Diem Agreement (the "Assigned Operative Agreement") as it relates to such unit.

Notwithstanding the foregoing, the Seller shall continue to be entitled to the benefit of any rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the Closing Date, as specified in the Purchase Agreement.

3. Acceptance of Assignment; Assumption of Obligations; Effect of Assignment. The Buyer accepts the assignment contained in Section 2 hereof and, in respect of the period on and after the Closing Date, assumes all obligations of the Seller under, and agrees to be bound to the same extent as the Seller by all the terms of, the Assigned Operative Agreement. Effective on and after the Closing Date, the Buyer shall be deemed to stand in the place of the Seller for all purposes under the Assigned Operative Agreement with respect to the units and each reference in the Assigned Operative Agreement to the Seller shall be deemed to mean the Buyer, insofar as the units are concerned. The Seller, in respect of the period on and after the Closing Date, is released of all obligations of the lessor of the units under the Assigned Operative Agreement.

4. <u>Definitions</u>. Except as otherwise specified or as the context may otherwise require, the following terms have the respective meanings set forth below whenever used in this Agreement (terms defined in the singular to have a correlative meaning when used in the plural and vice versa).

Bill of Sale: as to a unit of Equipment, a bill of sale in the form of Exhibit I hereto.

<u>Closing Date</u>: as to a unit of Equipment and related Ownership Interest, the date of the Bill of Sale.

<u>Equipment</u>: the equipment listed on <u>Exhibit A</u> hereto, together with each and every part, accessory, component and any equipment installed therein or attached thereto owned by the Seller (individually such railcars shall be referred to as a "unit" or "unit of Equipment").

Lessee: The Columbus & Ohio River Rail Road Company.

<u>Per Diem Agreement</u>: that certain Schedule No. 4 to Per Diem Lease Agreement No. 1538-92-01, dated as of May 11, 1999, between the Seller and Lessee (referencing Railroad Per Diem Lease Agreement 1538-92-01, dated as of August 3, 1995, between the Seller and Lessee).

Ownership Interest: the Seller's rights, title and interest in and to the Equipment and the Seller's rights and obligations under the Assigned Operative Agreement with respect to such Equipment.

- 5. <u>Amendments</u>. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.
- 6. <u>Notices</u>. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 10.5 of the Purchase Agreement.
- 7. <u>Headings</u>. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.
- 8. <u>Counterparts</u>. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- 9. <u>Governing Law</u>. This Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the State of Illinois, without giving effect to the conflict of law rules thereof.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

Barry J. Nohalty

TRANSPORT CAPITAL RAIL PARTNERS, LLC

By: TRANSPORT CAPITAL, LLC

Its: Manager

Ву:\_\_\_\_\_

D. Stephen Menzies

President

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first above written.

# GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

By:	
Barry J. Nohalty	
Vice President	

## TRANSPORT CAPITAL RAIL PARTNERS, LLC

By: TRANSPORT CAPITAL, LLC

Its: Manager

D. Stephen Menzies

President

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Residing in: 1

so, he executed the foregoing instrument for the purposes therein contained.

"OFFICIAL SEAL"
Alexandra May Hunter
Notary Public, State of Illinois
My Commission Exp. 03/01/2002

Name: Way All The Notary Public

My Commission Expires: 03/0//(12

State of Illinois
County of Cook

On this, the Aday of December, 2000, before me, a Notary Public in and for said County and State, personally appeared D. Stephen Menzies, the President of Transport Capital LLC, a Manager of Transport Capital Rail Partners, LLC, who acknowledged himself to be a duly authorized officer of Transport Capital LLC, and that, as such officer, being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

"OFFICIAL SEAL" Alexandra May Hunter Notary Public, State of Illinois My Commission Exp. 03/01/2002

Name: // // Notary Public

My Commission Expires: Residing in:

#### **EXHIBIT I**

#### **BILL OF SALE**

For good and valuable consideration, the receipt and sufficiency of which are hereby
acknowledged, General Electric Railcar Services Corporation ("Seller"), does hereby sell,
transfer and assign to Transport Capital Rail Partners, LLC ("Buyer") all of Seller's rights, title
and interest in and to the equipment described in Exhibit A hereto (the "Equipment"), subject to
the terms and conditions of the Purchase Agreement, dated as of December 1, 2000, between
Seller and Buyer (the "Purchase Agreement"), and the Assignment and Assumption Agreement,
dated December, 2000, between Seller and Buyer.

Seller represents and warrants to Buyer and its successors and assigns that at the time of delivery of the Equipment, Seller had legal title thereto and good and lawful right to sell the Equipment, and the Equipment was free and clear of all Liens (as defined in the Purchase Agreement), other than as described in Section 3.3 of the Purchase Agreement.

## GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

By:		
Name:		
Title:		
Date:	, 2000	

## Exhibit A Equipment

Count	Car Initial	Car#	Lessee/Customer	Contract #
1	HS	4701	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
2	HS	4805	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
3	HS	4807	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
4	CUOH	7300	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
5	CUOH	7302	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
6	CUOH	7303	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
7	CUOH	7304	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
8	CUOH	7305	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
9	CUOH	7306	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
10	CUOH	7307	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
11	CUOH	7308	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
12	CUOH	7309	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
13	CUOH	7310	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
14	CUOH	7311	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
15	CUOH	7312	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
16	CUOH	7313	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
17	CUOH	7314	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
18	CUOH	7315	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
19	CUOH	7316	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
20	CUOH	7317	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
21	CUOH	7318	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
22	CUOH	7319	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
23	CUOH	7320	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
24	CUOH	7321	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
25	CUOH	7322	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
26	CUOH	7323	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
27	CUOH	7324	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
28	CUOH	7325	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
29	CUOH	7326	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
30	CUOH	7328	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
31	CUOH	7329	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
32	CUOH	7330	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
33	CUOH	7331	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
34	CUOH	7332	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
35	CUOH	7333	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
36	CUOH	7334	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
37	CUOH	7336	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
38	CUOH	7337	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
39	CUOH	7338	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
40	CUOH	7339	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
41	CUOH	7340	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
42	CUOH	7341	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
43	CUOH	7342	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
44	CUOH	7343	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
45	CUOH	7344	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
46	CUOH	7345	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
47	CUOH	7346	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
48	CUOH	7347	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
49	CUOH	7348	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
50	CUOH	7349	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01

## Exhibit A Equipment

Count	Car Initial	Car#	Lessee/Customer	Contract #
51	CUOH	7350	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
52	CUOH	7352	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
53	CUOH	7353	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
54	CUOH	7355	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
55	CUOH	7356	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
56	CUOH	7357	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
57	CUOH	7358	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
58	CUOH	7359	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
59	CUOH	7360	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
60	CUOH	7361	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
61	CUOH	7363	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
62	CUOH	7364	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
63	CUOH	7366	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
64	CUOH	7367	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
65	CUOH	7369	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
66	CUOH	7370	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
67	CUOH	7371	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
68	CUOH	7372	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
69	CUOH	7373	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
70	CUOH	7374	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
71	CUOH	7375	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
72	CUOH	7376	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
73	CUOH	7377	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
74	CUOH	7378	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
75	CUOH	7379	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
76	CUOH	7380	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
77	CUOH	7381	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
78	CUOH	7382	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
79	CUOH	7383	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
80	CUOH	7384	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
81	CUOH	7385	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
82	CUOH	7386	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
83	CUOH	7387	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
84	CUOH	7388	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
85	CUOH	7389	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
86	CUOH	7390	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
87	CUOH	7392	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
88	CUOH	7394	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
89	CUOH	7395	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
90	CUOH	7396	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
91	CUOH	7397	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
92	CUOH	7398	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
93	CUOH	7400	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
94	CUOH	7401	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
95	CUOH	7403	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
96	CUOH	7403 7404	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
97	CUOH	7405	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
98	CUOH	7406	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
99	CUOH	7407	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
100	CUOH	7408	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
			Polaribas & Cino Mitor Mall	1000-02-01-007-00-00-01

2 of 3 SF#504523

## Exhibit A Equipment

Count	Car Initial	Car#	Lessee/Customer	Contract #
101	CUOH	7409	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
102	CUOH	7410	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
103	CUOH	7411	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
104	CUOH	7412	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
105	CUOH	7413	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
106	CUOH	7414	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
107	CUOH	7415	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
108	CUOH	7426	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
109	CUOH	7427	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
110	CUOH	7428	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01
111	CUOH	7429	The Columbus & Ohio River Rail	1538-92-01-004-00-00-01